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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/088,505	03/28/2002	Takuji Okamoto	220583USOXPCT	2412
22850	7590	04/16/2004	EXAMINER	
OBLON, SPIVAK, MCCLELLAND, MAIER & NEUSTADT, P.C. 1940 DUKE STREET ALEXANDRIA, VA 22314			LU, C CAIXIA	
			ART UNIT	PAPER NUMBER
			1713	

DATE MAILED: 04/16/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 10/088,505	<b>Applicant(s)</b> OKAMOTO ET AL.	
	<b>Examiner</b> Caixia Lu	<b>Art Unit</b> 1713	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
  - If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
  - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
  - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 25 February 2004.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-15, 18, 21-24 and 26-31 is/are pending in the application.
- 4a) Of the above claim(s) 1, 6, 7, 12-15, 18, 23, 24 and 27-30 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 3-5, 8-11, 17, 21, 22, 26 and 31 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

**DETAILED ACTION*****Election/Restrictions***

1. Applicant's election with traverse of Group II, Claims 3-5, 8-11, 17, 21, 22, 26 and 31 in Remarks filed on Feb. 25, 2004 is acknowledged. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, and applicant's arguments over the burden of search and standard of unity of invention are irrelevant because they are not related to restriction requirement as set forth in the previous office action mailed on Jan. 26, 2004, the election has been treated as an election without traverse (MPEP § 818.03(a)).

***Claim Rejections - 35 USC § 102/103***

2. Claims 3-5, 8-11, 26 and 31 rejected under 35 U.S.C. 103(a) as being unpatentable over Gauthier et al. (Macromolecules 1995, 28, 3771-3778).

Gauthier teaches propylene homopolymers prepared in the presence of bridged metallocenes. The propylene polymers, Entries 1 and 2 listed in Tables 4 and 5, have no melting temperature, (mmmm) and (mm)(rr)/(mr)<sup>2</sup> which meet those limitations of the instant claims 31, 3, 4, and 26.

Gauthier does not disclose other properties of the polypropylene such as hexane solubles, intrinsic viscosity, [rrrr/(1-mmmm)], W25 and fractions of (rmm). However, those characteristic are controlled by the polymer structure or molecular weight. Because Gauthier's polypropylene is prepared by a metallocene catalyst which is in the same category of catalysts as those of applicants and melting temperature, and (mmmm) and (mm)(rr)/(mr)<sup>2</sup> characteristics meet those limitations of the instant claims,

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one would have expected the structure Gauthier's polymer to be the same or substantially the same as that of the instant claims, thus, characteristics such as [rrrr/(1-mmmm)], W25 and fractions of (rmm) are also expected to inherently encompass those of the instant claims.

Once a product appearing to be substantially identical is found and a 35 USC 102/103 rejection made, the burden of proof is shifted to the applicant to show an unobvious difference. In re Fitzgerald, 205 USPQ 594. In re Fessmann, 180 USPQ 324. Applicants have not met their burden to demonstrate an unobvious difference between the claimed product and the products of the prior art examples.

***Claim Rejections - 35 USC § 103***

3. Claims 17, 21, and 22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gauthier et al. (Macromolecules 1995, 28, 3771-3778) in view of Tanizaki et al. (US 5,998,039).

Gauthier's teaching of preparation of propylene polymer is relied upon as shown above. While Gauthier does not expressly teach preparation of a resin comprising the propylene polymer and a nucleating agent and a molded product from the propylene polymer. Preparation of a molding product from a propylene polymer are conventional in the art and a nucleating agent are often added to the propylene polymer during the melting molding process to increase the crystallization rate in high-speed molding process. Such is taught in Tanizaki col. 29, lines 7-10.

Thus, it would have been obvious to a skilled artisan at the time the invention was made to employ Tanizaki's teaching to Gauthier's propylene polymer to prepared a

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molding product by introducing a nucleating agent to the polymer since such is conventionally done in the art to optimize the productivities and enhance crystallinity of the molding product and in the absence of any showing criticality and unexpected results.

### ***Conclusion***

4. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Caixia Lu whose telephone number is (571) 272-1106. The examiner can normally be reached from 9:00 am to 3:30 pm.

If attempts to reach the examiner by telephone are unsuccessful and the matter is urgent, the examiner's supervisor, David Wu, can be reached at (571) 272-1114. The

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fax numbers for the organization where this application or proceeding is assigned is  
(703 872-9306.

Any inquiry of a general nature or relating to the status of this application or  
proceeding should be directed to the receptionist whose telephone number is (571) 272-  
1700.

A handwritten signature in black ink, appearing to read 'Caixia Lu'.

Caixia Lu, Ph. D.  
Primary Examiner  
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